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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,974

01/26/2004

Gary T. Neel

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EXAMINER

WOODS, TERESA S

ART UNIT

PAPER NUMBER

3686

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,974	<b>Applicant(s)</b> NEEL ET AL.	
	<b>Examiner</b> TERESA WOODS	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the application filed on 11/26/2003, and subsequent preliminary amendment filed on 05/01/2009.
2. Claims 1-30 are currently pending and have been examined.

### ***Response to Arguments***

Applicant's remarks have been fully considered and found persuasive; therefore, the Examiner has withdrawn the previous rejection under 35 USC § 102(b). The Examiner has entered a new rejection under 35 USC § 103(a) and applied art already of record. Applicant's arguments are now moot in view of the new grounds of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciurczak (US 2002019367 A1) in view of Cunningham (US 6,306,104 B1).

6. **Claim 1:**

Ciurczak discloses the limitations as shown below:

- *storing said test result in said medical diagnostic testing device* (See at least ¶0030);

This citation shows how a computer is used as a storing device to store data with a patient's glucose level.

- *recording a voice message, associated with said test result, in said medical diagnostic test device* (See at least ¶0101).

This reference shows how a voice recognition feature is used as a transmission mechanism between a diabetic patient and a doctor.

Ciurczak discloses the limitations as shown in the rejections above.

Ciurczak does not disclose the following limitation, but Cunningham discloses the following limitations:

- *obtaining a test result using said medical diagnostic testing device* (See at least column 43, lines 4-21).

This citation teaches steps to obtain results of a medical diagnostic with the use of a device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ciurczak's voice recorded test results with the medical diagnostic testing device of Cunningham to provide a user-friendly way to perform any self-diagnosis tests and get results quickly to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

**7. Claim 12:**

Ciurczak discloses the limitations as shown below:

- *a memory for storing said test result* (See at least ¶0030);

This reference shows how a computer is used as a storing device to store data with a patient's glucose level.

- *an audio system for recording a voice message associated with said test result* (See at least ¶0101).

This reference shows how a voice recognition feature is used as a transmission mechanism between a diabetic patient and a doctor. Ciurczak discloses the limitations as shown in the rejections above. Ciurczak does not disclose the following limitation, but Cunningham discloses the following limitations:

- *a testing system for obtaining a test result* (See at least column 43, lines 4-21).

This citation teaches steps to obtain results of a medical diagnostic with the use of a device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ciurczak's voice recorded test results with the medical diagnostic testing device of Cunningham to provide a user-friendly way to perform any self-diagnosis tests and get results quickly to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

**8. Claim 14:**

Ciurczak discloses the limitations as shown below:

- *a controller for controlling said measurement system, said controller determining said test result based on said at least one measurement* (See at least ¶0096) .

In this reference, the measurement system used as the controller is a electrochemical detector. Ciurczak discloses the limitations as shown in the rejections above. Ciurczak does not disclose the following limitation, but Cunningham discloses the following limitations:

- *a measurement system for interacting with said test strip, with a sample applied thereto, to obtain at least one measurement; and* (See at least Fig. 18-21, column 10, lines 19-24)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ciurczak's measuring controller to the measurement system using tests strips of Cunningham to provide a more comprehensive way to perform any self-diagnosis tests and get results quickly to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

9. Claims 25, 27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox (US 20050002483 A1) in view of Cunningham (US 6,306,104 B1).

10. **Claim 25:**

Wilcox discloses the limitations as shown below:

- *In a medical diagnostic testing device that obtains and stores test results, the improvement comprising* (See at least column 43, lines 4-21).

This citation teaches steps to obtain results of a medical diagnostic with the use of a device. Wilcox discloses the limitations as shown in the rejections above. Wilcox does not disclose the following limitation, but Cunningham discloses the following limitations:

- *an audio system for recording a voice message associated with a test result* (See at least ¶0101).

This citation shows how a voice recognition feature is used as a transmission mechanism between a diabetic patient and a doctor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Wilcox's medical diagnostic testing device to the recorded voice message results of Cunningham to provide a more comprehensive way of performing any diagnosis tests and get results quickly to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.



11. **Claim 27:**

Wilcox and Cunningham disclose the limitations as shown in the rejections above. Wilcox and Cunningham do not disclose the following limitation, but Wilcox further discloses *wherein said audio system includes digital storage for digitally storing a recorded voice message* (See at least Fig. 3, ¶0009).

12. **Claim 29:**

Wilcox and Cunningham disclose the limitations as shown in the rejections above. Wilcox and Cunningham do not disclose the following limitation, but Wilcox further discloses *a user interface for receiving a record instruction, wherein said medical diagnostic testing device records said voice message in response to said record instruction* (See at least Fig. 3, ¶0009). Here, the computer is the testing device, the computer program is the means to receive instructions, the study is the test result and images are interpreted using voice recognition software.

13. **Claim 30:**

Wilcox and Cunningham disclose the limitations as shown in the rejections above. Wilcox and Cunningham do not disclose the following limitation, but Wilcox further discloses *a user interface for receiving a retrieve instruction, wherein said medical diagnostic testing device displays a stored test result and*

*plays a recorded voice message associated with said stored test result in response to said retrieve instruction (See at least Fig. 2, ¶0009, ¶0016).*

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Teresa Woods** whose telephone number is **571.270.5509**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Jerry O'Connor** can be reached at **571.272.6787**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>

. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

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or faxed to **(571) 273-8300**.

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Examiner, Art Unit 3686  
07/08/09

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